**THE HON'BLE SRI JUSTICE B. PRAKASH RAO**
**AND**
**THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

**WRIT PETITION NOs. 4424 OF 2004, 6305, 6661, 6682, 6684, 6712, 7503, 7527, 7532, 7535, 8289, 9619, 12173 22795 AND 23974 OF 2006**

Date: 04.12.2006

Between:

Commissioner of Police, Hyderabad and two others.

…. Petitioners.

And

L.K. Kasinath and others.

….Respondents.

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**COMMON ORDER:** (per Hon'ble Sri Justice Ramesh Ranganathan)

In these batch of writ petitions, the orders of the A.P. Administrative Tribunal, in directing the petitioners herein to consider the case of the respondent-applicants, in accordance with G.O.Ms. No. 280, Home (Police) Department, dated 13.12.2001, read with R.P. No. 24090 to 24157 of 1989 and W.P. No. 406 and 6208 of 2000, is under challenge.

To understand the circumstances under which these orders were passed, and similar orders continue to be passed, by the A.P. Administrative Tribunal, it is necessary to note certain facts and refer to the relevant rules as amended from time to time.

In exercise of its powers, conferred by the proviso to Article 309 of the Constitution of India, the Government of A.P. made the "A.P. Revised Scales of Pay Rules, 1969". These rules were notified in G.O.Ms. No. 173, Finance (Pay Commission) Department dated 13.06.1969 and came into force retrospectively from 19.03.1969. Rule 3 thereunder details the principles of fixation of pay in the revised scales and provides that, notwithstanding anything in the Fundamental Rules or in the Hyderabad Civil Services Rules, the principles which shall govern

fixation of pay, of government employees who opt for these scales of pay in the revised scales of pay, are as prescribed in clauses (a) to (j) thereunder. Clause "c" of Rule 3 read thus:

"After the pay of the employee is fixed in accordance with clauses (a) & (b) above, weightage of one increment for service of 5 years and above in the old scale of pay in which he was drawing his pay shall be added"

The rules, notified in G.O.Ms. No. 173 dated 13.06.1969, were amended in G.O.Ms. No. 105 dated 13.04.1970 and a proviso was added to clause 'c' of Rule 3 which reads thus:

"Provided that non-gazetted government employees whose pay is fixed in accordance with clauses (a) and (b) shall be entitled to a weightage of one increment for service of three years and above upto six years and two increments for service of six years and above in the post in which he was drawing pay".

While under clause "c" of Rule 3, of the rules notified in G.O.Ms. No. 173 dated 13.06.1969, weightage of one increment was given for service of five years and above in the old scales of pay which an employee was drawing, as a result of the insertion of the proviso to Rule 3(c), vide G.O.Ms. No. 105 dated 13.04.1970, an employee was entitled for weightage of one increment for service of three years and upto six years in the post in which he was drawing his pay. Not only was the minimum period of service reduced from five years to three years, the amendment prescribed the service to be rendered in a "post" as compared to the service to be rendered in the "scales of pay" as prescribed earlier.

The State Government, (in the Police Department), in its memo No. 905/Pol.C/72-7 dated 15.01.1973, informed that all service that counts for increments in the grade count for weightage for the purpose of pay fixation and, since the period of training on fixed pay does not count for purposes of annual

increments in the post, the objection of the Accountant General that the period of training would not count for purposes of weightage was correct. The memo dated 15.01.1973, in effect, clarified that the fixed pay, paid during the period of training, did not count for the purpose of granting weightage increments.

The government issued revised orders, in G.O.Ms.No.128 dated 20.3.1976, prescribing stipend for the period of training and ordered that the period of training shall be allowed to be counted as duty for all purposes like probation, pension, leave, increments etc subject to the restriction that, unless the employee completes the training or passes the prescribed tests during or after the training, he shall not be eligible for the first increment. The departments concerned were requested to examine the relevant service rules and to make provisions therefor.

Learned Special Government Pleader, appearing on behalf of the Learned Advocate General, would contend that, the executive instructions in G.O.Ms. No. 128 dated 20.03.1976 was contrary to Rule 13 (b) of the A.P. Police Subordinate Service Rules and, though G.O.Ms. No. 128 dated 20.03.1976 required the respective departments to examine the relevant service rules and to make provisions in this regard, no such rules were, in fact, made. The government, in its memo dated 29.09.1987, clarified that the orders issued in G.O.Ms. No. 128 dated 20.03.1976, providing for counting the training period for all purposes, was correctly objected to by the Accountant General and that the excess amounts paid, if any, would be recovered from the concerned.

Aggrieved thereby R.P. Nos. 24090 to 24157 of 1989 were filed before the A.P. Administrative Tribunal and the Tribunal, by

its order dated 15.04.1998, allowed the revision petitions and set aside the impugned proceedings. It is necessary to note that the Tribunal, while allowing R.P.Nos.24090 to 24157 of 1989, took into consideration Rule 33(a) of the A.P. State and Subordinate Service Rules, and the government memos dated 15.01.1973 and 29.09.1987. The Tribunal also examined the Rules notified in G.O.Ms. No. 173 dated 13.06.1969 and G.O.Ms. No. 105 dated 13.04.1970. The Tribunal held that, under Rule 10 of the A.P. Police Subordinate Service Rules, a person appointed to a class or a category shall, from the date on which he joins duty, be on probation, that Rule 11(a) lays down that probationers shall undergo training and examination and that, within the period of their probation and course of training, their pay during the training period shall be the basic pay of the post plus usual allowances admissible at the time of training. The Tribunal held that, if the petitioners in the R.P. were already probationers within the meaning of Rule 10 of the A.P. Police Subordinate Service Rules, the period of training also falls within the period of probation and, even though the pay they were given may be called as stipend, as their pay during the training period shall be the basic pay of the post plus usual allowances admissible, they could not be declared ineligible for weightage on the ground that they were only receiving a stipend. The Tribunal held that once their probation started, and as direct recruits their date of joining would reckon for their seniority, it could not be held that such period would not count for increments and would, therefore, not count for weightage. The Tribunal also held that, on completion of probation, such employees became regular members of the service and once their probation started, as they were already members of the service,

their pay would have to be fixed correctly and it was not open to the authorities to consider the portion in the probation period, spent on training, as not being eligible for regular pay. The Tribunal concluded that the petitioners in the R.P. were entitled for weightage as it had been clarified in G.O.Ms. No. 128 dated 20.03.1976 that the training period would be counted for all purposes and that weightage should be extended depending upon the extent of service. The Tribunal relied on the judgment of the Supreme Court in **State of Himachal Pradesh Vs. J.L. Sharma**[1], wherein it was held that the training period of direct recruits shall be counted for determining the seniority in the service provided that such direct recruits successfully complete their training. It is necessary to note that Rule 13(b), of the A.P. Police Subordinate Service Rules, was not brought to the notice of the Tribunal when R.P. Nos. 24090 to 24157 of 1989 came to be allowed by order dated 15.04.1998.

Seeking a direction from this Court that the order of the Tribunal, in R.P. No. 24090 to 24157 of 1989 dated 15.04.1998, be implemented within a period of one month, W.P. No. 406 of 2000 was filed. Seeking to have the judgment of the Tribunal, in R.P. No. 24090 to 24157 of 1989, quashed, W.P. No. 6208 of 2000 was filed by the Government of A.P, the Director General of Police and the Superintendent of Police, Nellore District. Both the writ petitions were heard together and the Division bench of this Court, by order dated 24.07.2000, disposed of W.P. No. 406 of 2000 and dismissed W.P. No. 6208 of 2000. The Division bench, in its order dated 24.7.2000, noted that in both the writ petitions the issue was whether advance increments, which had been ordered to be given,

was to be reckoned from the date of first appointment to the posts of police constables or from the date of declaration of probation. The Division bench noted that the Tribunal had held that the relevant rule was Rule 33(a) of the A.P. State and Subordinate Service Rules but this was sought to be construed by the government as only limited to seniority and not for payment of advance increments, that this interpretation was not accepted by the Tribunal as it was of the view that, even if probation was declared two years after initial recruitment, the declaration would date back and that the date of initial appointment not only counted for seniority but also for payment of advance increments. The Division bench held that this approach of the Tribunal did not call for interference and that they did not find any merit in W.P. No. 6208 of 2000. The Division bench issued directions to the respondents, in W.P. Nos. 406 of 2000, to give effect to the orders passed in R.P. No. 24090 to 24157 of 1989 dated 15.04.1998 within a period of one month from the date of receipt of a copy of the order. It is necessary to note that Rule 13(b) of the A.P. Police Subordinate Service Rules was not brought to the notice of the Division bench when W.P. No. 406 and 6208 of 2000 were heard and disposed of by order dated 24.07.2000.

Consequent upon the orders of the Division bench, in W.P. No. 406 and 6208 of 2000 dated 24.7.2000, G.O.Ms. No. 280 Home (Police) Department dated 13.12.2001 was issued wherein the government took note of the letter of the Director General and Inspector General of Police dated 03.12.2001 that the Government Pleader, Administrative Tribunal, Hyderabad and the Government Pleader for Services II, High Court of A.P. had both opined that it was not a fit case to file a Special Leave Petition in the Supreme

Court of India. The Government, after careful consideration of the matter, decided to implement the judgment of the A.P.A.T, in R.P. Nos. 24090 to 24157 of 1989 dated 15.04.1998 filed by Sri G.V. Ramanaiah, Armed Reserve Constable and 67 other Police Personnel of Nellore District, as confirmed by this Court in its judgment, in W.P. No. 406 and 6208 of 2000, dated 24.07.2000. The Director General and Inspector General of Police was requested to take necessary action in the matter accordingly.

As the benefit of weightage increments was extended to Sri G.V. Ramanaiah and 67 other police constables, in G.O.Ms. No. 280 dated 13.12.2001, several O.As came to be filed before the Tribunal and thereafter similar orders, such as those impugned in the present batch of writ petitions, came to be passed.

Learned Special Government Pleader, appearing on behalf of the learned Advocate General, would submit that neither Rule 10(1) nor Rule 11 of the A.P. Police Subordinate Service Rules relate to counting of service during the probationary period for being extended the benefit of weightage increments and that Rule 33(a), of the A.P. State and Subordinate Service Rules, which prescribes that seniority of a person be determined by the date of his first appointment, is also not relevant. According to the Learned Special Government Pleader, while Rule 11(a) of the A.P. Police Subordinate Service Rules, relates to pay during probation and training period, Rule 33(a) of the A.P. State and Subordinate Service Rules relates to seniority of employees. According to the learned Special Government Pleader, since the general rules are subject to the special rules framed for a particular service, the A.P. Police Subordinate Service Rules have overriding effect over the A.P. State and Subordinate Service Rules. Learned Special

Government Pleader would place reliance of Rule 13(b), of the A.P. Police Subordinate Service Rules, whereunder an approved probationer is entitled to count the period of his probation, excluding the period, if any, during which he was undergoing a course of training, for increments in his time scale of pay, to contend that while the period of probation is also required to be included for the purpose of granting increments, the period of training, during this period of probation, is required to be excluded. Learned Special Government Pleader would contend that, since Rule 13(b) was not brought to the notice of either the Tribunal or the Division Bench of this Court, no reliance can be placed on these judgments, rendered per incuriam, as they do not constitute a binding precedent. Learned Special Government Pleader would place reliance on **Mamleshwar Prasad Vs. Kanhaiya Lal**[2], **Deo NarainSingh Vs. Daddan Singh**[3], **Municipal Corporation of Delhi Vs. Gurnam Kaur**[4], **State of U.P. Vs. Synthetics and Chemicals Ltd**[5]; **S. Nagaraj Vs. State of Karnataka**[6] and **Nirmal Jeet Kaur Vs. State of M.P.**[7] in this regard.

Learned Special Government Pleader would submit that, the mere fact that the benefit was extended to some of the employees, pursuant to G.O.Ms. No. 280 dated 13.12.2001, did not confer any right on the respondent-applicants to claim a similar benefit, since two wrongs do not make a right and as no direction can be issued to the government to perpetuate an illegality. Learned Special Government Pleader would place reliance on **Union of India Vs. International Trading Company**[8] in this regard. According to

the learned Special Government Pleader since the relief granted earlier was in ignorance of Rule 13(b) of the A.P. Police Subordinate Service Rules, which required the training period not to be reckoned for the purpose of granting weightage increments, the respondent-applicants were not entitled for the benefit of being granted weightage increments for the training period during their probationary period.

Sri Gopalrao Gandikota, learned Counsel for the respondent-applicant, would contend that the respondent-applicants were regularly appointed, were placed on probation prior to 1976 and are similarly situated to Sri G.V. Ramanaiah and the 67 other Police constables who were given the benefit of weightage increments, even for their training period while on probation, under G.O.Ms. No. 280 dated 13.12.2001. Learned Counsel would rely on Rule 10, of the A.P. Police Subordinate Service Rules, which prescribes the period of probation and provides that every person appointed to a class or category shall, from the date on which he joins duty, be on probation. Learned Counsel would refer to Rule 11(a) which relates to probationers who have to undergo training and their pay. Learned Counsel would refer to Rule 13 which relates to pay of approved probationers and clause (a) thereunder which provides that an approved probationer on duty shall be granted the pay which would be admissible to him if he were a full member of the service in the category in which he is holding the post. Learned Counsel would submit that Rule 13(b) relates to the normal annual increments in the time scale of pay which an approved probationer was entitled to and that the said rule has no application to grant of weightage increments. Learned Counsel would refer to Rule 2(4) of the A.P.

State and Subordinate Service Rules which defines “Approved Probationer” to mean a member of the service who has satisfactorily completed his probation in such service. Learned Counsel would submit that since Rule 13 of the A.P. Police Subordinate Service Rules relates only to approved probationers, it has no application to the respondent- applicants. Learned Counsel would submit that, since Rule 13(b) relates to approved probationers and it is only after a person is found suitable for full membership under Rule 11(a) would he become an approved probationer, the said rule has no application for computation of weightage increments during the period of probation including the training period. Learned Counsel would rely on Rule 15 of the A.P. Police Subordinate Service Rules which relates to seniority. Learned Counsel would submit that non-mention of Rule 13(b), in the affidavit filed in support of W.P. No. 6208 of 2000, does not necessitate a presumption that Rule 13(b) was not brought to the notice of the Division Bench. According to the learned counsel the order of the Division Bench, in W.P.Nos.406 and 6208 of 2000 dated 24.07.2000, is a mandamus to the government to grant weightage increments even during the training period while on probation and, since the government had implemented the order of the Division bench in G.O.Ms. No. 280 dated 13.12.2001 in respect of some employees, it could not deny the said benefit to the respondent-applicants as that would amount to hostile discrimination between similarly situated employees, thereby violating the fundamental rights of the respondent-applicants under Articles 14 and 16 of the Constitution of India. Learned Counsel would place reliance on **J.L. Sharma**[1] in support of his submission

that the respondent-applicants were entitled for weightage increments during the training period. According to the learned Counsel since the Government had implemented the orders of the Tribunal, in R.P. Nos. 24090 to 24157 of 1989 dated 15.04.1998, and the Division bench judgment of this Court, in W.P. Nos. 406 and 6208 of 2000 dated 24.07.2000, by issuing G.O.Ms. No. 280 dated 13.12.2001, it was estopped from contending that the aforesaid orders/judgment were not applicable or from denying the benefits of weightage increments to the respondent-applicants who are similarly situated to those given the said benefit under G.O.Ms. No. 280 dated 13.12.2001.

It is obvious from a plain reading of the order of the A.P. Administrative Tribunal, in R.P. Nos. 14090 of 24157 of 1989 dated 15.04.1998, and the judgment of the Division bench of this Court, in W.P. Nos. 406 and 6208 of 2000 dated 24.07.2000, that Rule 13(b) of the A.P. Police Subordinate Service Rules was not noticed.

An order or judgment of a Court/Tribunal, even if erroneous, is binding inter-parties. The binding character of judgments, of Courts of competent jurisdiction, is in essence a part of the rule of law on which administration of justice is founded and a judgment of the High Court under Article 226, passed after a hearing on merits, must bind the parties till set aside in appeal. (**Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra**[9]; **UPSRTC Vs. State of U.P.**[10]). Matters in controversy, in writ proceedings under Article 226, decided after full contest, after affording fair opportunity to the parties to prove their case, by a Court competent to decide it and which

proceedings have attained finality, will operate as res judicata in subsequent proceedings on the same matters in controversy between the same parties. (**Gulabchand Chhotalal Parikh Vs. State of Gujarat**[11]; **State of Punjab Vs. Bua Das Kaushal**[12]). The rule of conclusiveness of judgments, as to the points decided earlier of fact, or of law, or of fact and law, in every subsequent proceeding between the same parties is the rule of res judicata. Once a matter which was the subject-matter of a lis stood determined by a competent Court, no party thereafter can be permitted to reopen it in a subsequent litigation. The principle of res judicata envisages that a judgment of a Court of competent jurisdiction directly upon a point creates a bar as regards a plea, between the same parties in some other matter in another Court, where the said plea seeks to raise afresh the very point that was determined in the earlier judgment. (**Swamy Atmananda Vs. Sri Rama Krishna Tapovanam**[13]; **Iswar Dath Vs. Land Acquisition Collector**[14]). Issues which have been concluded inter-parties cannot be raised again in proceedings inter-parties. (**State of Haryana Vs. State of Punjab**[15]).

In so far as the employees, who were parties to the earlier proceedings are concerned, (i.e., petitioners in R.P. Nos. 24090 to 24157 of 1989 before the A.P. Administrative and W.P. No. 406 of 2000 and the Respondents in W.P. No. 6208 of 2000), the order of the Tribunal and the judgment of the Division bench of this Court was implemented by the government in G.O.Ms. No. 280 dated 13.12.2001.

None of the applicants in the O.As, impugned in the present

batch of writ petitions, were parties either to R.P. Nos. 24090 to 24157 of 1989 or to W.P. Nos. 406 and 6208 of 2000. While a decision inter-parties, even if it is erroneous, is binding, not every observation made in a judgment would constitute a binding precedent for other cases. In **Nirmal Jeet Kaur**[7] the Supreme Court referred with approval to the observations, in **Young Vs. Bristol Aeroplane Co. Ltd**[16], that the "quotable in law" is avoided if it is rendered in ignorance of binding authority. **"Incuria"** literally means carelessness. Law declared is not that can be culled out but that which is stated as law to be accepted and applied. A conclusion without reference to the relevant provision of law is weaker than even casual observations. (**Synthetics & Chemicals Ltd**[5]). A decision passes sub-silentio when the particular point of law involved in the decision is not perceived by the Court or present in its mind. A decision should be treated as given *per incuriam* when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. (**Gurnam Kaur**[5]). A decision rendered in ignorance of a rule having the force of law is to be treated as given *per incuriam* and ceases to have precedential value.

In **Mamleshwar Prasad**[2], the Supreme Court observed:

"….. CERTAINTY of the law, consistency of rulings and comity of courts - all flowering from the same principle - converge to the conclusion that a decision once rendered must later bind like cases. **We do not intend to detract from the rule that, in exceptional instances where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, it may not have the sway of binding precedents. It should be a glaring case, an obtrusive omission…..**" **(emphasis supplied)**

If it were to be held that in view of Rule 13(b), of the A.P. Police Subordinate Services rules, weightage increments could not be granted taking into account the training period during probation, then the order of the Tribunal, in R.P. Nos. 24090 to 24157 of 1989 dated 15.04.1998 and the judgment of the Division bench of this Court, in W.P. Nos. 406 and 6208 of 2000, dated 24.07.2000 would be decisions given *per incuriam* as Rule 13(b) was not noticed.

The contention regarding estoppel must only be noted to be rejected. The A.P. Police Subordinate Service Rules, are rules made in exercise of the proviso to Article 309 of the Constitution of India, and have the force of law. If it were to be held that Rule 13(b), of the A.P. Police Subordinate Service Rules, applied and the period of training during the probationary period was required to be excluded for grant of weightage increments, the doctrine of estoppel would have no application. There is no estoppel against a Statute (**Pune Municipal Corporation Vs. Promoters and Builders Association**[17]). There can be no estoppel against the exercise of legislative power of the State. So also the doctrine cannot be invoked to prevent the government from acting in discharge of its duty under the law. (**Jit Ram Shiv Kumar Vs. State of Haryana**[18], **Electronics Corporation of India Vs. Secretary, Revenue Department, Govt. of A.P.**[19] **and Hira Tikkoo Vs. Union Territory, Chandigarh**[20]).

The mere fact that the government did not bring Rule 13(b), of the A.P. Police Subordinate Service Rules, to the notice of either the Tribunal or this Court earlier, would not disentitle it from doing so in the present writ petitions. The State cannot be denied

the right to contend that its actions are invalid under the provisions of the Constitution of India or a statutory provision or a rule having the force of law. In **State of Bihar Vs. Project Uchcha Vidya Sikshak Sangh**[21], the Supreme Court observed:-

"……...Even if there is no dispute as regards number of schools, in view of the stand taken by the State and particularly in view of the fact that it appears from the records that recognition of the school, if any, had wrongly been granted to some schools where buildings were also not completed or the process of selection was also not over, it may be necessary for the State to have a further look in the matter.

It is furthermore necessary to scrutinise as to whether the teaching and non-teaching staff appointed for the said purpose fulfil the criteria in terms of the policy decision of the State or not. Their qualifications laid down under other relevant statutes for the purpose of obtaining permission must also be scrutinised.

We do not find any merit in the contention raised by the learned counsel appearing on behalf of the respondents that the principle of equitable estoppel would apply against the State of Bihar. **It is now well known, the rule of estoppel has no application where contention as regards a constitutional provision or a statute is raised. The right of the State to raise a question as regards its actions being invalid under the constitutional scheme of India is now well recognised. If by reason of a constitutional provision, its action cannot be supported or the State intends to withdraw or modify a policy decision, no exception thereto can be taken. It is, however, one thing to say that such an action is required to be judged having regard to the fundamental rights of a citizen but it is another thing to say that by applying the rule of estoppel, the State would not be permitted to raise the said question at all**. So far as the impugned circular dated 18-2-1989 is concerned, the State has, in our opinion, a right to support the validity thereof in terms of the constitutional framework……."

Since its jurisdiction under Article 226 of the Constitution of India is founded on equity and fairness, when it is brought to the notice of the High Court that the earlier orders passed by it was a mistake, and its perpetuation would be contrary to law and result in miscarriage of justice, then it cannot be prevented from correcting its error. In **S. Nagaraj**[6], the Supreme Court held:-

".....Justice is a virtue which transcends all barriers. Neither the rules of procedure nor technicalities of law can stand in its way. The order of the Court should not be prejudicial to anyone. Rule of stare decisis is adhered for consistency but it is not as inflexible in Administrative Law as in Public Law. Even the law bends before justice. **Entire concept of writ jurisdiction exercised by the higher courts is founded on equity and fairness. If the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice then it cannot on any principle be precluded from rectifying the error. Mistake is accepted as valid reason to recall an order. Difference lies in the nature of mistake and scope of rectification, depending on if it is of fact or law. But the root from which the power flows is the anxiety to avoid injustice. It is either statutory or inherent. The latter is available where the mistake is of the Court.** In Administrative Law the scope is still wider. Technicalities apart if the Court is satisfied of the injustice then it is its constitutional and legal obligation to set it right by recalling its order....." (emphasis supplied).

The contention that denial of the benefit of weightage increments to the respondent-applicants, who are similarly situated to those who were given the said benefit under G.O.Ms. No. 280 dated 13.12.2001, would amount to hostile discrimination must also be rejected. The mere fact that the benefits were extended to some others earlier pursuant to orders of Courts/Tribunals, albeit in ignorance of an applicable provision of law, cannot confer any right on others to claim the said benefit. An order contrary to law cannot be the basis of a claim for parity or of a plea of discrimination under Articles 14 and 16 of the Constitution of India.

In **Bharat Petroleum Corporation Ex-employees Association Vs. Bharat Petroleum**[22], the Supreme Court observed:

".....It is sought to be contended for the appellants that when the other employees similarly situated in the same respondent-Corporation, are receiving pensionary benefits on DA-merged basis, the denial thereof to the appellants is arbitrary, unjust and unfair offending the right to equality and

impinges on the livelihood of the retired employees violating Articles 14 and 21 of the Constitution. We find no substance in the contention. It is seen from the narrative that the appellants had specifically raised the demand for increasing the pension on the basis of DA merger with basic pay and demand that 50% of the total wages should be the foundation for calculation of the pension. In the industrial adjudication this demand was expressly negatived and was allowed to become final. That apart, it is seen that in the industrial adjudication the other demands also had been raised and while granting the benefits on other demands the parties Management and the workmen entered into a compromise in the High Court, agreeing to pay to the employees retired prior to 1-1-1989 higher amount of Rs 50,000 and the working employees the benefit of Rs 25,000.

Thus, it could be seen that having consented to the adjudication made by the Tribunal and having allowed the industrial award to become final, it is not open to the appellants to go behind the award and claim pension on parity with others on the anvil of Articles 14 and 21. **That apart the difference of payment of the pension had arisen on account of the revision of the wages etc. only in the industrial adjudication and demands by the union on behalf of the workmen. The discrimination was due to the judicial determination and not due to the acts of the respondents. It is no longer, therefore, open to the workmen to contend that they are entitled to parity in the payment of pension with the employees in the other regions. The retired employees in other regions are getting higher pension than the retired employees of Bombay region but it is only due to judicial adjudication**....." (emphasis supplied)

If the contention of the learned Special Government Pleader, that Rule 13(b) would disentitle grant of weightage increments for the period of training during probation, were to be accepted then the earlier order of the government, in G.O.Ms. No. 280 dated 13.12.2001, would be contrary to law and extending these benefits to the respondent-applicants may well result in perpetuating an illegality.

Reliance placed on **J.L. Sharma**[1], to contend that the respondent-applicants are entitled to be given the benefit of weightage increments, reckoning the training period during the period of probation, is also misplaced. I n **J.L. Sharma**[1], the

Supreme Court observed:-

“…….In exercise of such power under the proviso to Article 309 the Recruitment Rules to the Himachal Pradesh forest Service Class II has been made and the said Rules also has been amended. The amended Rules, therefore, is a competent legislation determining the service conditions of persons recruited to the Himachal Pradesh Forest Service Class II. In R. S. Ajara case this court considered the question as to whether training period of a direct recruit can be taken into account for fixation of seniority in the cadre. In that case, the statutory Recruitment Rules did not at all deal with the question of seniority of the officers directly recruited and promotees. The government, however, passed a resolution dated 31/1/1992 declaring therein that the training period of directly recruited Assistant Conservators of Forests in Gujarat State Forest Service, Class II, shall be taken into account for the purposes of seniority. This court considered the aforesaid resolution of the government and came to hold that since in the statutory Recruitment Rules there is no provision for determination of inter se seniority between the promotees and direct recruits and there being no provision which can be said to be contrary to the aforesaid administrative resolution of the State government, the resolution must be held to be valid and the period during which a direct recruit undergoes training can be taken into account for determining his seniority in the cadre of Class II Forest Service. The case in hand is a much stronger case than the case which was for consideration before this court in R. S. Ajara since in the present case the statutory Recruitment Rules itself contained the stipulation that the training period shall be treated to be "in service". We are unable to accept the interpretation given by the tribunal to the amended provisions of column (10) of the Rules to the effect that the training period of direct recruits will be treated only for the purpose of getting pay and not for the purpose of seniority. If really the legislative intent would have been to grant pay to the candidates while on training then it would not have been necessary to indicate that "while undergoing the training be treated as 'in-service' candidates from the date of joining the Institute". The language of column (10) as amended by the Third Amendment Rules of 1986 is clear and unambiguous and unequivocally indicates that the period of training shall be treated as "in service". We do not find any prohibition or restrictions in the statutory rules prohibiting the "in service" period for being counted for the purpose of seniority. This being the position in our considered opinion the tribunal committed serious error of law in holding that the training period will be treated to be "in service" only for the purpose of getting pay and not for the purpose of seniority. No such limited interpretation can be given to the express language used in column (10) and on the other hand on giving a full effect to the provisions of column (10) the conclusion is irresistible that the training period will be treated as a part of the service and will necessarily, therefore, be counted for the seniority of the direct recruits. The decision of this court in Prafulla Kumar Swain case on which the learned counsel for the respondent relied upon is of no assistance inasmuch as in the said case Regulation 12 (c) in unmistakable terms had provided that the training period

will not count as service under government and service will count only from the date of appointment to the service after successful completion of the course of training. In fact the aforesaid decision has been duly noticed by this court in R. S. Ajara case and on account of the distinctive features of regulation a containing a prohibition it has been held that the decision is of no application. We have also considered the submissions of the learned counsel for the respondent that such interpretation of ours would be repugnant to other provisions of the Recruitment Rules but on a thorough scrutiny of the Rules we do not find any repugnancy which can be said to occur on account of the interpretation given by us to column (10) of the Schedule and other columns in the Schedule. We have also carefully gone through the decision of this court in the case of A. N. Sehgal and we do not find anything stated therein contrary to what we have indicated in the present case in interpreting the provisions of the Recruitment Rules determining the service conditions of the employees of the Himachal Pradesh Forest Service Class II. In the aforesaid premises the impugned judgment and order of the tribunal is set aside and OA No. 109 of 1987 stands dismissed. It is held that the training period of the direct recruits shall be counted for determining the seniority in the service provided of course the said direct recruit successfully completes the training and then is absorbed in Class II Forest Service……..”

In **J.L. Sharma**[1], rules made under the proviso to Article 309 of the Constitution of India, for recruitment in Himachal Pradesh Forest Service Class II posts, was under consideration. The said recruitment rules contained a stipulation that the training period shall be treated to be “in service”. Interpreting the said rules, the Supreme Court held that the training period for direct recruits should be counted for determining their seniority in the service. The question as to whether the training period, during the period of probation, should be taken into consideration for grant of weightage increments would, therefore, depend on a consideration of the applicable rules. Since a Rule similar to Rule 13(b), of the A.P. Police Subordinate Service Rules, did not arise for consideration in **J.L. Sharma**[1], the said judgment is of no assistance to the respondent-applicants herein.

The crux of the matter is the scope and purport of Rule

13(b) of the A.P. Police Subordinate Service Rules. The answers to the several contentions, urged before us by either side, would depend on an adjudication of the question as to whether Rule 13(b) of the A.P. Police Subordinate Service Rules would necessitate denial of weightage increments during the training period while on probation. While the learned Special Government Pleader would contend that the said rules would apply for grant of increments, including weightage increments, Sri Gopal Rao Gandikota, learned Counsel for the respondent-applicants, would submit that Rule 13(b) would apply only in the case of annual increments and not for weightage increments. Learned Counsel would submit that, since weightage increments are governed by the A.P. Revised Scales of Pay Rules, as amended from time to time, which are special rules, it is the special rules which would prevail over the general rules contained in the A.P. Police Subordinate Service, more so in the absence of a non-obstante clause therein. Learned Special Government Pleader, would, however, submit that since the A.P. Revised Scales of Pay Rules apply to all categories of posts, the said rules are general rules and it is the A.P. Police Subordinate Rules which are special rules and would therefore prevail over anything contrary thereto in the A.P. Revised Scales of Pay Rules. Learned Special Government Pleader would also contend that, since Rule 13(b) disentitles a person from being granted annual increments during the training period, a person not entitled for annual increments would also not be entitled for weightage increments.

It is necessary to note that none of these contentions have been examined by the Tribunal in the O.As impugned in the present batch of writ petitions. As laid down by the Supreme Court

i n **L. Chandra Kumar Vs. Union of India**[23], the Tribunals, constituted under the Administrative Tribunals Act, continue to act as courts of first instance in respect of areas of law for which they have been constituted and, in the absence of any of these contentions having been examined by the Tribunal, we do not consider it appropriate to examine them in certiorari proceedings under Article 226 of the Constitution of India. The impugned orders passed by the Tribunal are set aside and all the O.As are remanded to the Tribunal for its consideration afresh, in accordance with law, as expeditiously as possible, in any event, not later than four months from the date of receipt of a copy of this order.

The writ petitions are accordingly allowed. However, in the circumstances, without costs.

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B.PRAKASH RAO,J

Date: -12-2006

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RAMESH RANGANATHAN,J

MRKR/ASP

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[1] AIR 1998 SC 378

[2] AIR 1975 SC 907

[3] 1986 Suppl. SCC 530

[4] 1989(1) SCC 101

[5] 1991(4) SCC 139

[6] 1993 Suppl.(4) SCC 595

[7] 2004(7) SCC 558

[8] AIR 2003 SC 3983

[9] 1990(2) SCC 715

[10] 2005(1) SCC 444

[11] AIR 1965 SC 1153

[12] AIR 1971 SC 1676

[13] AIR 2005 SC 2392

[14] 2005(7) SCC 190

[15] 2004(12) SCC 673

[16] (1944) 2 All ER 293

[17] 2004(10) SCC 796

[18] 1981(1) SCC 11

[19] 1999(4) SCC 458

[20] 2004(6) SCC 765

[21] 2006(2) SCC 545

[22] 1995(2) SCC 15

[23] AIR 1997 SC 1125